# DEMYSTIFYING THE ISSUE OF "OWNERSHIP" UNDER THE AI REGIME: AN INDIAN PERSPECTIVE

*Prabhdeep Kaur Malhotra*[*]

**ABSTRACT**

The worldwide usage of Chat GPT has helped human beings perform in numerous tasks in several ways. It is not just a tool, but also leads to the enhancement of customer experiences. It offers wide variety of benefits to different sectors by enabling digital interactions and offering them a wide range of benefits. It may, however, be proved to be perplexing at times because of the dearth of originality of the content it copies from copyright protected sources without taking consent of the copyright holder and without compensating them in any way. The copyrighted data used by Chat GPT, or other open AI products is quite often found to infringe copyright due to gathering and usage of data without due authorization and thereby conflicting with the main objective of intellectual property rights *i.e.*, balance between public and private interest. Generally, AI systems do not have the rights unlike human beings which implies that the copyright regime is not obliged to protect AI as author or co-author of the work created by it. The rights such as right to paternity and integrity might become redundant in case authorship is granted to such works. The Indian Copyright Act does not define "computer generated work" for "literary, dramatic, musical or artistic work" as it defines only the author who created the work. Even after the grant of "authorship" to AI-generated works, the next question which remains unanswered is the disbursal of royalty. As Chat GPT is becoming a significantly important tool for scientific research, Elsevier, one of the world's leading sources for journals, books and articles has listed Chat GPT as co-author in one of the research articles. This recognition has no doubt, legal implications under the copyright regime in the longer run.

***Keywords:*** *Artificial Intelligence, Chat GPT, Copyright, AI, Infringement.*

**I. Background**
**II. The Present Copyright Regime: Analysis of Indian Copyright Act, 1956**
**III. Test of Originality**
**IV. Fixation in Tangible Form**
**V. AI Issues under Copyright: How to Define "Ownership"?**
**VI. Chat GPT and the Ethical Issues**
**VII. Role of Judiciary**
**VIII. Conclusion**

[*] Assistant Professor, Amity Law School, Amity University, Noida

## I. Background

ON AUGUST 31, 1955, a Proposal for the Dartmouth Summer Research Project on Artificial Intelligence was submitted by J. McCarthy & others,[1] which proposed to carry out a 2-month 10-man study of Artificial Intelligence in Hanover, New Hampshire. The Proposal was an attempt to figure out the ways in which machines may be able to solve problems meant for human beings. The credit for coining the phrase "Artificial Intelligence" goes to J. McCarthy, who during the 50th anniversary of the Dartmouth Artificial Intelligence Conference in the year 2006 acknowledged the fact that the project of 1956 fell short of expectations. This field was launched with a general presumption that every feature of intelligence can be performed by a machine.

The first AI program[2] was written for computer known as "The Logic Theorist" developed in the year 1956 to find out proofs for equations. Finding a better proof for a given equation than one existed already was the unique feature of this program. It was believed that if the complex problems were solved using computer systems, then intelligent machines could be built up based on that.[3] AI is divided into three broad levels: General AI, Narrow AI, and Strong AI. An AI which is capable of performing the cognitive tasks just like a human brain with same level of accuracy is known as a General AI, however, when a machine can perform a task better than a human being it is referred to as a Narrow AI and when the machine outperforms the human brain, it is known as Strong AI.[4] The industries where AI is currently implemented include healthcare, banking, manufacturing, construction, Ecommerce, cyber security, marketing, education, human resources, transport etc.

The Indian Copyright law is governed by the Copyright Act, 1957. Under the Act, no such definition of "copyright" has been provided. Section 14 of the Act says that "For the purposes of this Act, 'copyright' means the exclusive right subject to the provision of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely…" The word 'Copyright' is not a 'singular' term but refers to the 'bundle of rights'. There is no requirement of registration under the Copyright law and the duration of protection provided is lifetime plus 50 years under Berne Convention, 1883, and

[1] J. McCarthy, Dartmouth College, M. L. Minsky, Harvard University, N. Rochester, I.B.M. Corporation, C.E., Shannon, Bell Telephone Laboratories

[2] It was written by Allen Newell, Herbert Simon, J.C. Shaw.

[3] M. Tim Jones, *Artificial Intelligence: A Systems Approach* (first published 2008, LPL 2010) 4.

[4] Simplilearn, *Artificial Intelligence* 4 (first published 2020, IndraStra Global).

Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 ("TRIPS Agreement") and lifetime plus 60 years under the Copyright Act, 1957.

There are primarily three pre-requisites of copyright. The first one is the originality of Expression and not the Ideas because Copyright is not concerned with the originality of ideas, but the original expression of ideas. Section 13 of the Copyright Act, 1957 deals with Copyright in Original literary, dramatic, musical, and artistic works, cinematographic works, and sound recordings. Literary, dramatic, musical and artistic works are the primary works, whereas secondary works include cinematographic films and sound recordings. A work must be fixed in tangible medium of expression. Article 2(2) Berne Convention: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form."

## II. The Present Copyright Regime: Analysis of Indian Copyright Act, 1956

The Copyright Act protects two major rights *i.e.*, Economic Rights and Moral Rights. Economic Rights are the rights which entitle the author to reap the benefits of his labour in monetary forms. Under the Indian Copyright Law, these rights include the right of reproduction, right of distribution, right to communicate work to the public, make translation/ adaption of the work, etc. Right to reproduce the work can be defined as "reproducing" or making "copies" of the work. The terms 'reproduction' and 'copying' are used simultaneously, however, none of these terms are defined under the Act. In *Ladbroke Ltd* v. *William Hill Ltd*,[5] it was held that reproduction means "copying". It does not include independent works produced without copying.

Right to distribution is another economic right which enables the owner to put copies of the copyrighted work in the commercial market. It is related to the control over dissemination of physical copies of the work. When the copies are in circulation, the author has no longer right to prevent further circulation, *i.e.*, his rights get exhausted. This right is related to the exhaustion of rights in its strict sense. In this chapter, the research is mainly focused on the exhaustion of rights when the copyright protected works are distributed by the rightful owner in the market.

[5] [1964] 1 All ER 465

Moral Rights entitle the author to control the usage of their works. These include right to protect integrity of the work, right of paternity, right to attribution and right to object to false attribution by others, right to object to alterations of the work, right to object to excessive criticism, right to withdraw a work, right to dictate forms of performance of the work, etc.

Moral rights are even protected under the Berne Convention under Article 6bis which entitles the author to seek legal remedies in case his right of integrity and attribution are violated. Moral rights form the significant part of Berne Convention as these rights are vested in the author after his death or even if he transfers his economic rights to some other person. Article 6b is states an author may "object to any distortion, mutilation or modification" of his work which is deemed to be "prejudicial to his honour or reputation".[6]

The difference of treatment of economic and moral rights shows the right balance between public interest and private interest to adjust both the utilitarian as well as natural rights perspective of jurisprudential analysis. Utilitarian perspective enables the copyright protection if it provides incentive to the creation. Whereas the economic rights benefit provides incentive to the author to make further creations. Even after the expiry of prescribed term, the perpetual protection does not restrict the ability of society to receive any benefits from the work, without interfering with the utility aspect of it.

**Originality of Expression: Idea Expression Dichotomy**

Not every expression is protected under the law. Only those expressions which are fixed in a tangible form could be protected under the law. Under section 13 of the Copyright Act, 1957 only the original literary, dramatic, and musical works are protected as subject-matter of copyright. To decide on the originality of a compilation, it is not advisable to consider the parts of it individually because most of the compilations are not original, but some may be original.[7] What is relevant here is the amount of skill, labour and judgment involved in the making of compilation, it is a matter of degree depending upon facts and circumstances of each and every case.[8] In *Ladbroke Football Ltd* v. *William Hill Football Ltd*,[9] it was held that when a creator tries to create something he puts his own signature on it. The word 'original'

[6] *Amarnath Sehgal* v. *Union of India* 2005 (30) PTC 253 (Del).
[7] Elizabeth Verkey, Intellectual Property: Law and Practice (1st edn., Eastern Book Company, Lucknow, 2015) 33.
[8] Alka Chawla, Law of Copyright: Comparative Perspectives 5 (1st edn., Lexis Nexis, 2013).
[9] [1964] 1 All ER 465.

means that the work should originate from the author himself. Originality does not require accuracy, but it requires exercise of skill, labour, and judgment.

In *Interlego AG* v. *Tyco Industries Ltd,*[10] it was held that small modifications will not make the creation new work independently protected by copyright even though the modifications are technically significant. In *L.B. Plastics Ltd* v. *Swish Products*,[11] it was held that the question of "originality" depends upon the amount of labour, skill and judgment expanded by the creator on the creation "as a whole". In *University of London Press* v. *University Tutorial Press Ltd*,[12] the Court found that "original" in copyright means originality of expression in writing and it does it does not necessarily mean expression of original thought.

## III. Test of Originality

The word "original" is not defined by the legislature in USA, UK and India. It is important to understand that a straight-jacket formula cannot be designed to define "original" as it is dependent on many factors like the kind of work,[13] the intent of judiciary[14] and the medium of work. The characteristics of originality are: It is concerned with the relationship between author or creator and the work; the way the work is expressed; derivative works can be original; originality threshold has been set at a very low level and whether the work is original inevitably depends upon the particular social, cultural, and political context in which the judgment is made.[15]

The work should not be copied from another existing work to qualify the test of originality.[16] In the case of *Eastern Book Company* v. *Navin J. Desai*,[17]the Court has stated

---

[10] [1989] AC 217.
[11] [1979] R.P.C. 551.
[12] [1916] 2 Ch 601.
[13]Alka Chawla, *Law of Copyright: Comparative Perspectives* (1st edn., Lexis Nexis, 2013) 36, whether the work is primary or secondary, fiction or non-fiction, headnotes of judgments or copyedited judgments, guidebooks or compilations etc.
[14]Alka Chawla, *Law of Copyright: Comparative Perspectives* (1st edn., Lexis Nexis, 2013) 37, it is to lay down the test as and when a case with peculiar facts appears before it.
[15] Lionel Bently and Brad Sherman, *Intellectual Property Law* 94 (4th edn., OUP, 2014) 94.
[16] V K Ahuja, *Intellectual Property Rights in India* (2nd edn., Lexis Nexis, 2015) 11; *See also Macmillan And Company Ltd.* v. *K. And J. Cooper*, (1924) 26 BOMLR 292, *Kelly* v. *Morris*, AIR 1924 PC 75, *Shyam Lal Paharia* v. *Gaya Prasad Gupta 'Rasal'*, AIR 1971 All 192; *Macmillan* v. *Suresh Chander Deb*, 1890 ILR 17 Cal 951; *Gopal Das* v. *Jagannath Prasad*, AIR 1938 ALL 266; *Agarwala Publishing House* v. *Board of High School and Intermediate Education, U.P.*, AIR 1967 All. 91, *Rupendra Kashyap* v. *Jiwan Publishing House,* 1996 (38) DRJ 81,
[17] (2001) PTC 57 (Del); *See* also *Rai Toys Industries* v. *Munir Printing Press*, Delhi, 1982 PTC 85.

that in the text of judgments, no copyright exists.[18] Changes which are trivial in nature like changes in spelling, corrections of typographical mistakes, elimination of quotations etc. cannot claim copyright protection as held in the case of *Eastern Book Company* v. *D. B. Modak*.[19] The court observed that in the judgments delivered by Court, copyright could be given only if necessary skill, capital and labour are invested and some quality and character are there in the judgment printed, which were not present in the original judgment so as to differentiate with the original judgment.

Under section 13 of the Act, the word "original" does not mean originality of ideas but the work should not be copied from any other work *i.e.* it should originate from author as it is a result of his skill and labour.[20] The Copyright law is concerned only with the expression of thought where originality is the primary requirement of copyright.[21] Therefore, it can be said that to qualify for copyright protection, a work must be original to the author. The term 'original' depicts the independent creation of work by the author opposed to the copied work having least creativity, which means that the required level of creativity to demand copyright protection is very less as even a minimum creativity is sufficient to claim protection.[22]

Arranging old content on a new or novel method may provide some degree of protection under copyright.[23] However, the subject need not be original to obtain copyright protection for literary, dramatic, musical or artistic works.[24] It is crystal clear that copyright law depends on the principle of originality of expression created by a person using his own skill and hard work of a nature which shall be enjoyable by him as an exclusive right which gives a chance to no one to reap the benefits of his own labour.[25]

**Doctrine of Merger**

As it is very much clear that the primary purpose of copyright is to protect the expression of an idea and not idea itself and in case, they are inseparable none is protected. This is referred to as doctrine of merger. This doctrine reflects that when there is an intrinsic connection between idea and idea resultant expression becomes indistinguishable from idea, protection

[18] (2001) PTC 57 (Del); *See also Rai Toys Industries* v.*Munir Printing Press, Delhi,* 1982 PTC 85.
[19] (2008) 1 SCC 1.
[20] *Rupendra Kashyap* v. *Jiwan Publishing House*, 1996 (38) DRJ 81.
[21] *University of London Press Ltd.*v.*University Tutorial Press, Ltd*., [1916] 2 Ch. 601.
[22] *Feist Publications Inc.* v. *Rural Telephone Service Co. Inc.,* 18 USPQ 2d. 1275.
[23] *GangavishnuShrikisondas*v. *MoreshvarBapujiHegishte*, ILR 13 Bom 358.
[24] *C. Cunniah& Co.* v. *Balraj& Co*., AIR 1961 Madras 111.
[25] *Designers Guild Ltd.* v. *Russell Williams (Textiles) Ltd*., [2000] 1 WLR 2416 (HL).

cannot be granted.[26] Nimmer on copyright clearly states that copyright protection is afforded to the expression making idea free to all. However, there is merger of idea and the expression. In such cases, the protection of expression rigorously would lead to conferment of monopoly of idea which would lead to the contravention of statutory principle. Courts have thus, invoked doctrine of merger in such cases.

In the case of *Herbert Rosenthal Jewelry Corporatio*n v. *Kalpakian*,[27] it was found that the idea of jewel shaped bee pin was in the public domain and free to copy and thus, copyright does not subsist in it. The Court has held that doctrine of merger is applicable in games as play ideas and abstract rules are included there.[28]

**Doctrine of Sweat of Brow**

This doctrine gives emphasis on the aspect that what copyright is, it is sweat of brow. It puts emphasis on the aspect that when a person puts skill, hard work, and labour, he should be entitled to copyright protection. It focuses on the judgment person has exercised to make the work copyrightable. However, this doctrine has been rejected in the United States. In few occasions Court has rejected the doctrine of "sweat of the brow" as it has numerous flaws extending copyright protection in compilation.[29]

The concept of "originality" has undergone a major shift from the "sweat of the brow" doctrine to the "modicum of creativity".[30] The purpose of copyright is to preclude others from reaping who have not sown.[31] In *CCH Canadian Ltd* v. *Law Society of Upper Canada*[32] it was held that the 'sweat of the brow' approach to originality is too low standard whereas the creativity standard of originality is too high.

**De Minimis Principle**

---

[26] Elizabeth Verkey, *Intellectual Property: Law and Practice* (1st edn., Eastern Book Company, Lucknow, 2015) 31.
[27] 446 F.2d 738(1971).
[28]*Mattel, Inc.* v. *Mr. Jayant Agarwalla*, 2008 (38) PTC 416 (Del).
[29]Feist Publications v. Rural Telephone Services Co, 499 U.S. 340 (1991); *See* also *Key Publications, Inc.* v. *Chinatown Today Publishing Enterprises Inc*, 945 F.2d 509, 511 (2d Cir. 1991).
[30] Analysis of Doctrines, 'Sweat of the Brow and Modicum of Creativity' vis-à-vis Originality in Copyright law' <www.indialaw.in/blog/blog/law/analysis-of-doctrines-sweat-of-brow-modicum-of-creativity-originality-in-copyright/> (visited on 21.08.2023) at 2:00 pm.
[31] Abraham Drassinower, "Sweat of the Brow, Creativity, and Authorship: On Originality in Canadian Copyright Law" 1 UOLTJ 111 (2004); *See* also *Walter* v. *Lane*, [1900] A.C. 539.
[32] [2004] 1 SCR 339; *See* also *Eastern Book Company* v. *D.B. Modak*, 2002 PTC 641; *N.T. Raghunathan* v. *All India Reporter*, AIR 1971 Bom. 48; *Sayre* v. *Moore*, (1785) 1 East 361.

To afford copyright protection to a work, it is necessary that the work should possess minimum level of creativity. The degree of creativity need not be too high, a minimum level of creativity will suffice. *In Gordon* v. *Nextal Communications and Mullen advertising*[33] it was found that the infringer must demonstrate the copying of protected material below the quantitative threshold of substantive similarity. Only in that case a copyright infringement is *de minimis*.

The Courts consider various factors while applying *de minimis* like the cost of adjudication, type and size of harm, purpose of statute or rule in question, effect of adjudication, intent of infringer etc.[34]In *Newton* v. *Diamond*,[35] the Court held that the important question is whether major portion of defendant's work is generated from the work of plaintiff. In the matter if *Cummins* v. *Bond*,[36] it was found that the expression of work must originate from author and should not be copied from another work.

## IV. Fixation in Tangible Form

Copyright law will only apply if the work has been recorded or fixed in a tangible medium. Therefore, thinking of a poem or humming a tune will not confer copyright protection.[37] The requirement of fixation is defined in 17 U.S.C. §102(a), which applies the copyright protection to "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Section 101 offers further insight: "A work is 'fixed' in a tangible medium of expression when its embodiment . . . is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."[38] But under the Indian Copyright Act, 1957, no such definition is given. But it is clear from the judicial decisions that expression of an idea shall not be protected unless it is reduced in tangible form.

According to Copinger and Skone James on Copyright: "Since fixation addresses the issue of the definition of the work, and proof as to its existence and content, there is no reason

---

[33] 345 F.3d 922 (9th Cir. 2007).

[34] Andrew Inest, "A Theory of De Minimis and a Proposal for Its Application in Copyright" *21:2 BTLJ* 951 (2006).

[35]388 F.3d 1189 (9th Cir. 2004).

[36][1927] 1 Ch. 167; *See* also *Tele-Direct (Publications) Inc.* v. *American Business Information, Inc*., (1997), 73 C.P.R. (3d) 1 (Comp. Trib.); *RG Anand*v. *Delux Films,* (AIR 1978 SC 1613).

[37] Supra note 9 at 52.

[38] Evan Brown, "Fixed Perspectives: The evolving Contours of the fixation requirement in Copyright law" *10:1 WJLTA* 19 (2014).

of principle why the person who creates the work and the person who fixes the work should be the same. The functions of creation and fixation are distinct … Copyright protects the skill and labour of the author, and once he has created and expressed his work, it is immaterial how his work comes to be fixed."[39] In *Kelley* v. *Chicago Park District*[40] it was held that a living garden "lacks the kind of authorship and stable fixation normally required to support copyright." In *Kim Seng Co*. v. *J&A Importers*[41] the decision of Kelley was relied upon to support the fact that there is no fixation in a bowl of fruit and hence, it is not copyrightable.[42] It can be further said that the compelling argument for fixation requirement is its evidentiary value.[43]

Berne Convention contains the fixation requirement as it states that "it shall be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form."[44] Even the Convention's flexible fixation requirement is subject to the national treatment standard.[45] In *Walter* v. *Lane*[46] the Court found that a journalist transcribing public speech could be granted copyright in the recording of his speech. But a student cannot get his notes published, it doesn't matter if or not they are summaries.[47]

## V. AI Issues Under Copyright: How to Define "Ownership"?

> *"Only one thing is impossible for God: To find any sense in any copyright law on the planet."*
>
> \- Mark Twain

Under the Indian copyright regime, the word 'Original' is prefixed to literary, dramatic, musical and artistic works (Primary Works) only and not to cinematographic films and sound recordings (derivative works). The term 'Original' is not defined anywhere in the Indian, US or UK Legislation. There is no trait-jacket formula. It must be new or novel, not copied from

[39] Elizabeth Adeney, "Authorship and Fixation in Copyright Law" *35 MULR* 684 (2.011)
[40] 635 F.3d 290 (7th Cir. 2011); *See* also *Baltimore Oriolesv*. *Major League Baseball Players Ass'n*, 805 F.2d 663 (1986); *Tandy Corp.* v. *Personal Micro Computers, Inc*., 524 F. Supp. 171 (N.D. Cal. 1981); *Donoghue* v. *Allied Newspapers,* (1937) 3 All. E.R. 503.
[41] 810 F. Supp. 2d 1046 (C.D. Cal. 2011).
[42] Lydia Pallas Lorren, "Fixation as Notice in Copyright Law" *96:939 BULR* 951 (2016).
[43] Megan Carpenter, Steven Hetcher, "Function over Form: Bringing the Fixation Requirement into the Modern Era" *82:5 FLR* 2239 (2014).
[44] Berne Convention for the Protection of Literary and Artistic Works, 1886 art 2(2).
[45] Elizabeth White, "The Berne Convention's Flexible Fixation Requirement: A Problematic Provision for User Generated Content" *13:2 CJIL* 690 (2013).
[46] [1900] A.C. 539.
[47] *Caird* v. *Sime* (1887) LR 12 AC 326.

another work, it must be a combination of skill, labour, art etc. and it should necessarily originate from the author. It usually depends on the kind of work (copyedited judgments, head notes), intention of judiciary and medium of work (audio, visual etc.).

The present IP laws are not suitable to deal with the ownership of intellectual property rights or the so called "intangible assets" which are created by AI technology. The question of ownership is inextricably linked to the question of responsibility of a person when accidents are caused by the acts of AI. The first and foremost question that needs clarity is about the originality of 'ownership' or 'authorship'. To propound the authorship or ownership, the work created by AI must be original. The main question here is the ability of AI to create "original" work. It does not matter is the work is literary, dramatic, musical, or artistic work.

Compilations of literary work are recognised by the Copyright Act, 1957. Since the work created by AI relies majorly on the compiled works, it may qualify for copyright protection. However, there are supporters of copyright private interest which focus on compilations being something without adequate skill and judgment. A Copyright is a form of property and therefore must have owner.[48] Copyright can be assigned which means that the ownership of copyright can be transferred to a new owner. However, an assignment may be partial or may be limited in terms of duration or geographical scope.[49] Section 17[50] of the Copyright Act states that the author of the work shall be the first owner copyright.[51] But in case if the author of the work is an employee of another or government or public undertaking or an international organisation then the employer is deemed to be the first owner of copyright.[52]

Focusing on the ownership/ authorship aspect, any original and creative literary/ artistic work is protected under the Copyright Act provided it is not copied from another work. In case work is created by someone without the intervention of human being, copyright law does not provide any protection from infringement. The capability of AI of producing literary or artistic works has always raised policy questions for the system of copyrighted associated with the creative spirit of human being along with the encouragement, respect and reward for

---

[48] David Bainbridge, *Software Copyright Law* (4th edn., Butterworths, London, 1999) 22.
[49] *Id*. at 23.
[50] The Copyright Act, 1957 s. 17.
[51] Mathew 1 Thomas, *Understanding Intellectual Property* 1 (1st edn., Eastern Book Company, Lucknow, 2016).
[52] Alka Chawla, *Law of Copyright: Comparative Perspectives* 77 (1st edn., Lexis Nexis, 1013).

the human creativity. It relates to the social purpose within which the copyright system is present.

In case we exclude AI works from copyright protection, there will be a proper balance between public interest and private interest by favouring the creativity of human being over and above the machine creativity. In case if copyright protection is granted to AI-generated works, it will be assumed that human creativity and machine creativity are placed at an equal level and the copyright system will be seen as one favouring availability of varied number of protected works to the consumers at large.

Section 2(d) of the Act defines author in case of literary or dramatic work as the author of the work, composer in case of musical work, artist in case of artistic work, the photographer in case of photograph, producer in case of cinematographic film/ sound recording, and it is the person who created the work in case of computer generated literary, dramatic, musical, or artistic work.

There are certain rights provided to the owner of copyright under the Section 14 in the form of economic rights. In the case of *Rupendra Kashyap* v. *Jiwan Publishing House*[53] the Central Board of Secondary Education pointed themselves to be the author of question paper and thus, entitled to copyright protection. The court very clearly mentioned that unless and until a natural person is hired for doing compilation the copyright protection will not be granted to CBSE. Earlier programmer used to create computer generated work but nowadays with the advancement of technology, AI has started creating works without any human input. In fact, under the Practice and Procedure Manual (2018) issued by the Copyright Office, only natural person details must be provided as the Author of the work.

If rights are granted to the programmer of AI, it is quite often assumed that the work would have never come into existence without the intellectual creativity of programmer which logically results in the extension of authorship to the programmer. Usually, this practice is followed in countries like India, UK etc. Section 9(3) of the Copyright, Designs and Patents Act, 1988, "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."

---

[53] 1996 (38) DRJ 81.

Another viewpoint is the sole ownership of AI when original work is produced by it using an independent intellect which is no doubt, created without any intervention of the creator. But it has its own limitations as it would amount to granting sole ownership to the machine created work which would mean granting legal personality to a machine and secondly copyright is granted only to the human creativity and AI cannot be in any case treated at par with human beings.

Another stance could be the grant of authorship of AI created to nobody *i.e.*, it should be set free without any owner letting the subject matter fall in public domain which could be used by anyone. But this will be problematic for companies putting in lot of efforts to develop a well-managed AI with the expectation that it will generate profits one day. This might prove to be beneficial to the public at large leaving no economic benefits to the creator of invention especially the tech companies.

## VI. ChatGPT and Ethical Issues

While appreciating the advantages of Chat GPT the legal and ethical issues it brings to the authors or creators of work are conveniently forgotten. The use of ChatGPT (generative AI technologies) has brought rapid change in different professions. It can revolutionise various industries but relying blindly on this technology may lead to violation of ethical obligations of professionals especially in cases where lawyers trust the content provided for filing court cases which is detrimental to the interest of society. It is true to say that references or footnotes are not provided in the ChatGPT which attracts several ethical considerations as it is against the moral obligations towards authors who have contributed to a work and hence, making it difficult to figure out the authenticity of work. Verification of data is very difficult.

Due to absence of cognitive abilities in GAI it becomes a non-reliable source of information as there is absence of human intervention as the former is based wholly on algorithms. Moreover, it can be undoubtedly said that when information is asked on multiple devices, the content provided by ChatGPT is the same always. There have been instances when ChatGPT has provided information regarding fake cases in past when one of the parties appeared before the Hon'ble Court and the matter was dismissed right away. The growing prominence of ChatGPT is linked mainly to the ethical and social evaluation which draws on the expected consequences of technology driven by the capability of technology.

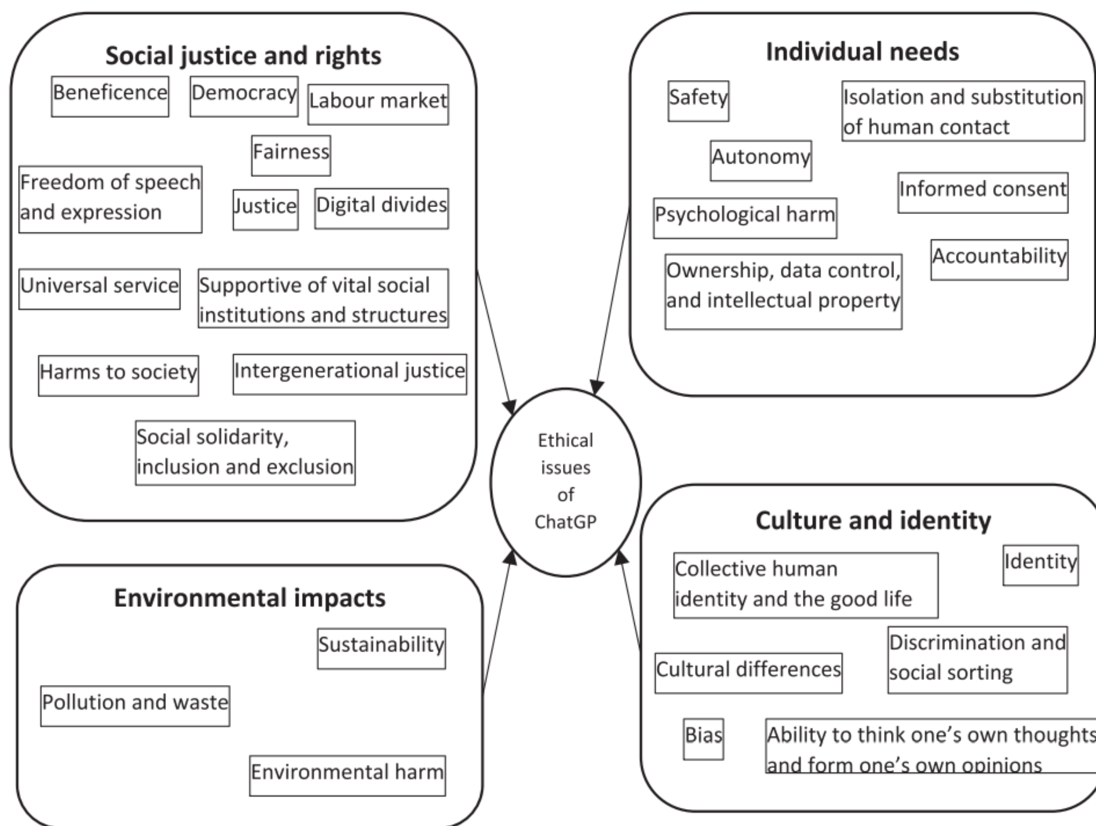


Fig: VI.1 Ethical impact of ChatGPT[54]

ChatGPT has been criticised because of the obvious biases and its tendency to produce false information. Lack of transparency about the sources as well as the credibility of source is one of the significant disadvantages. Using ChatGPT to cheat is again one of the academically dishonest ways which leads to passing off AI-generated content as original as it brings incorrect or fabricated data sometimes. The users may also be liable for copyright issues arising from ChatGPT outputs. Undoubtedly, it gives rise to not only ethical issue but also to potential legal issues as copyrighted content may be reproduced by it.

## VII. Role of Judiciary

The Copyright Office in one of cases in the year 2020, rejected an application listing a robot (RAGHAV) as the sole author of an artwork. RAGHAV is described as Robust Artificially Intelligent Graphics and Art Visualisernamed after a machine learning engineer who developed the application in 2019 in a project. The rejection of copyright was made on the ground that copyright could only be granted to the natural persons and not to a machine.

[54]Opinion paper on, The ethics of ChatGPT – Exploring the ethical issues of an emerging technology by Carsten Stahl, Damian Eke. *available at*:https://www.sciencedirect.com/science/article/pii/S0268401223000816. (last visited on 10th July 2025).

However, in a second application filed by the natural person and an AI naming as co-authors of another artwork, the registration was granted. After one year withdrawal notice was issued wherein the burden of proving the legal status of AI tool "Raghav Artificial Intelligence Painting App" was shifted on the applicant.

In the case of *Nova Production Ltd*. v. *Mazooma Game Ltd*.,[55] the issue concerned ownership of video game which was produced by Artificial Intelligence. The Court held that the author in this case was programmer who devised various elements of game including logic and rules wrote the related computer program. In countries like Australia, Copyright is given to the originator of AI in the machine's source code and the work generated by AI as there is no human intervention. In one of the cases, Court has held that the work created with the intervention of computer cannot be protected as there is no human intervention.[56]

The US Copyright Office has also very categorically stated that original works of authorship when created by a human being is protected under the copyright. This decision holds its validity from the case of *Fiest Publications* v *Rural Telephone Service Company, Inc*[57] in which the Court said that only a product of human intellect has the capability to get copyright protection because "the fruits of intellectual labour that are founded in the creative powers of the mind".

All the issues or areas dealing with the copyright in India are governed under the Copyright Act, 1957. Section 2(d) of the Act very clearly states that Copyright is not granted to the AI as the provision defines the term "author". A person should necessarily be an "author" in order to grant ownership of any copyrighted work barring AI from the authorship or ownership as it does not come within the ambit of author in relation to literary, dramatic, musical or artistic work. The definition itself suggests that the phrase "the person who causes the work to be created" would mean that legal person or a human being is the respective author of a protected work which makes it clear that present copyright regime excludes AI systems.

Moreover, unlike the CDPA, the Indian Copyright Act does not define "computer generated work" for "literary, dramatic, musical or artistic work" as it defines only the author who created the work. The Delhi High Court in the case of *Camlin Pvt. Ltd.* v. *National*

---

[55] [2007] EWCA Civ 219.
[56] *Acohs Pty Ltd* v. *Ucop Pty Ltd.*[2012] FCAFC 16.
[57] 499 U.S. 340.

*Pencil Industries*[58] while elaborating the term "author" stated that a printed carton which is mechanically reproduced was not a subject matter of copyright as it is not possible to determine the author in such a case. The court found that "copyright is conferred only upon authors or those who are natural person from whom the work has originated. In the circumstances the plaintiff cannot claim any copyright in any carton that has been mechanically reproduced by a printing process as the work cannot be said to have originated from the author. A machine cannot be an author of an artistic work, nor can it have a copyright therein".

In a recent case, the United States refused the registration of AI generated work a person does not become the author of the work merely based on indications given to generate a particular work. In this case copyright registration of the comic Zarya of the Dawn was cancelled because it was created using AI registered in the name of artist Kritina Kashtanova. Main reason given by the Court was the images created by Mid journey AI program does not render the artist author even though he "guided" the structure and content of each image by providing hundreds of descriptive prompts to create a perfect image. In a nutshell, it was not the fruit of human creation.

## VII. Conclusion

It is quite clear that the effect of IP regime on developed and developing nations is way too complex. The development of different capacities being scientific, indigenous etc. is indispensable for the growth, however, dependant on various factors. What is the need of the hour is to strike a balance just like it existed as early as the first copyright statute *i.e.* the English Statute of Anne, 1709 which required the copies of work to be deposited in the nine important libraries throughout England.

The significant rule on which the entire copyright law rests is that there is no room for protection of ideas unless and until it has been expressed in a material form. Article 9(2) of TRIPS Agreement says clearly that Copyright protection is extended to the expressions and not ideas, procedure, methods of operation or mathematical concepts. Similar provision is there in the WCT, 1996 under Article 2. But the Indian Copyright Act, 1957 does not have a similar provision. However, Indian judiciary has played a significant role while dealing with this aspect.[59] In *R.G. Anand* v. *Deluxe Films,*[60] the Court found that copyright does not

[58] AIR 1986 Delhi 444.
[59] Alka Chawla, *Law of Copyright: Comparative Perspectives* 39 (1st edn., Lexis Nexis, 2013).

subsist in any idea, themes, plots, legendary or historical facts etc. In the case of *Donoghue* v. *Allied Newspapers*,[61] it was held that an idea is nothing more than an idea no matter how original it is when it is not put into any form of expression or words, no copyright exists therein.

When there is joint authorship, it is very difficult to suggest when two people agree on the same thing to produce a work when one person provides material and the other one expresses the same thing in a presentable form to the people then the credit should go to the person responsible for transcribing the content/ thoughts of another.[62] In the case of *Barbara Taylor Bradford* v. *Sahara Media Entertainment Ltd.*[63] it was found that only the original expressed ideas are protected and not mere original idea itself. The law is obliged to protect originality of work allowing the author to reap benefits of his labour stopping others to enjoy those fruits. However, this protection need not be an over protection demotivating other to produce any such work in future. In another case of *Zee Telefilms Ltd.* v. *Sundial Communications Pvt. Ltd.*[64] the Court found that when development of same idea takes place in some other different manner, the similarities are bound to occur when the source is same. The courts, in such cases should identify whether the similarities form part of substantial aspect of the method or mode of expression adopted in the copyrighted work.

Treating AI and human author as joint authors where all the works of AI are not operated by any control of human being, it does not fit within the definition of "works of joint authorship". Under the Copyright Act, 1957 "works of joint authorship" means "a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors". Even at the international level, the Berne Convention, 1886 does not favour "non-human authorship". The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 incorporates the provisions of Berne Convention.

Under the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, 1996 (referred to as "Internet Treaties") authorship of artificial entities is not provided. The

[60] 1978 AIR 1613; *See* also *Bharat Matrimony Com P. Ltd.* v. *People Interactive (I) Pvt. Ltd.,* 2009 (41) PTC 709 (Mad).
[61] (1937) 3 All. E.R. 503.
[62] *Najma Heptulla* v. *Orient Longman Ltd.,* AIR 1989 Delhi 63.
[63] 2004 (28) PTC 474 Cal.
[64] 2003 (27) PTC 457 Bom; *See* also *Saltman Engineering Co. Ltd*. v. *Campbell Engineering Co. Ltd.,* (1948) 65 RPC 2203; *Fraser* v. *Thames Television Ltd.*, (1983) 2 All E.R. 101; *Mr. Anil Gupta* v. *Mr. KunalDasgupta*, 97(2002) DLT 257.

international regime does not favour any possibility of a non-human authorship, but they lay down the minimum common standards which must be followed in the respective national legislations. The countries should not derogate from the international obligations. If countries start giving copyright to the AI generated works, the question of who gets it is where the loophole exists. Viewing it from the perspective of "personhood" or "personality" theory, there must be an existing legal personality to whom the copyright will be granted. What if there is a purchaser of AI system?

Some of the journals even consider ChatGPT as the co-author accepting its contribution as an author but some journals accept its contribution as a tool but not as an author. Here the issue of "ownership" in AI-generated works under copyright law requires consideration. One option might be to give copyright to "no-one" as computers cannot be regarded as "authors" under copyright law. A human being is mortal and there is a limitation to the number of works created by him during his lifetime. But the same is not in the case of a robot which may even not be able to experience any kind of fatigue. On the other hand, denying copyright protection to such works will leave such works in the public domain freely accessible by the public. The concern leads to discouragement and dissemination of these works in not recognising these works.